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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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Trends in State Income Taxation

Unlicensed Foreign Corporations

The recent decision of the California Supreme Court in the case of *West Publishing Company v. McColgan,** decided February 27, 1946, (The Corporation Journal, April, 1946, page 128), is unique. It appears to be the first expression by the highest court of a state to the effect that an unlicensed foreign corporation may be required to pay a state income tax where engaged solely in interstate commerce with respect to the state. There the company had salesmen operating from offices in California, who were engaged in a continuous course of soliciting orders which were approved out of the state, followed by the shipment of goods into California in interstate commerce direct to the customers. The salesmen also effected collections from the California customers, who did not obtain title until full payment was made, and also assisted in making adjustments of complaints of such customers. The State court regarded its ruling as being in conformity with numerous decisions of the Supreme Court of the United States, which it cited, to the effect "that a state may tax net income from interstate commerce even though it cannot tax the privilege of engaging in interstate commerce."

The California Superior Court, from which the appeal had been taken, had remarked, in its opinion of March 2, 1944, also upholding the tax, (The Corporation Journal, October, 1944, page 212), that there was a trend in recent years indicating "a relaxing of the older rule of immunization of interstate commerce from State taxation." That "older rule" was emphasized during the first quarter of the century by the Supreme Court of the United States in such cases as *Cheney Bros. Co. et al. v. Commonwealth of Massachusetts,* 246 U. S. 147, decided in 1918, and *Alpha Portland Cement Co. v. Commonwealth of Massachusetts,* 268 U. S. 203, decided in 1923. There, the Massachusetts excise tax, a combination of a corporate excess and a net income tax, was held inapplicable to foreign corporations engaged within the state solely in interstate commerce. This rule was adhered to, with little variation, by the highest court until at least a decade ago, for the Supreme Court said in 1936, in *Matson Navigation Company et al. v. State Board of Equalization of the State of California et al.,* 297 U. S. 441, 728, that "a foreign corporation whose sole business in California is interstate and foreign commerce cannot be subjected to the tax in question." The "tax in question" was the California Bank and Corporation Franchise Tax, still imposed, after which the California Income Tax Act of 1937, which was applied in the *West Publishing Company* case,

* 166 P. 2d 861; rehearing denied, March 28, 1946.

was patterned. In 1937, The Oklahoma Supreme Court, in *Curlee Clothing Co. v. Oklahoma Tax Commission*, 68 P. 2d 834, had held that the Oklahoma income tax law did not apply to sales of goods by a foreign corporation effected through the solicitation of agents taking orders in Oklahoma and making collections of the purchase price, where the goods were shipped into Oklahoma in interstate commerce.

The "relaxing of the older rule of immunization of interstate commerce from State taxation," to which the lower court referred in the *West* case, does not appear to have reached cases involving net income taxes, other than in this latest case before the California Supreme Court. An examination of the decisions of the Supreme Court of the United States of the past decade does indicate such a relaxing of the older rule, but this has been related to cases involving *other types* of taxes of licensed foreign corporations, such as a franchise tax *not* based on income (*Stone v. Interstate Natural Gas Co.*, 103 F. 2d 544, 308 U. S. 522); a sales tax (*McGoldrick v. Berwind-White Coal Mining Co.*, 309 U. S. 33); a privilege dividend tax (*State of Wisconsin v. J. C. Penney Co.*, 311 U. S. 435); a use tax (*General Trading Company v. State Tax Commission of Iowa*, 322 U. S. 335), or an excise tax applied to a licensed foreign corporation based on net earnings (*Memphis Natural Gas Co. v. Beeler*, 315 U. S. 649).

Of the cases cited, perhaps that which most closely resembles the California *West Publishing Company* case is the *Memphis Natural Gas Co.* decision, last mentioned. There, the Tennessee excise tax, based on net earnings "arising from business done wholly within this state, excluding earnings arising from interstate commerce," was held by the Supreme Court of the United States to apply to a *licensed* foreign corporation which managed its business from an office in Tennessee. In that case, the Supreme Court made the remark, in passing, that in any case, even if taxpayer's business were wholly interstate commerce, a non-discriminatory tax by Tennessee upon the net income of a foreign corporation having a commercial domicile there, or upon net income derived from within the state, is not prohibited by the commerce clause.

Thus, while there is a trend toward permissive taxation through non-discriminatory taxes related to the interstate business of *licensed* foreign corporations, the extent of the possible present day application of such taxes to *unlicensed* corporations engaged solely in interstate commerce within a state remains to be defined. As indicated above, the trend of the older decisions, was to uphold the immunity of such companies from state income taxation. The *West Publishing* case, if it stands, may be the turning point of a trend in another direction.

It is quite possible that this case may be appealed to the Supreme Court of the United States. If this should be effected, it may be anticipated that an indication may be given as to how far a state may go in attempting to apply its net income tax to an *unlicensed* foreign corporation engaged solely in furthering interstate commerce within the taxing state.

Domestic Corporations

Maryland.

Sale of corporate stock by president to himself and certain other stockholders eight months after incorporation of company, without knowledge of remaining stockholders, held a constructive fraud upon the remaining stockholders. This was a derivative suit by stockholders to set aside the issuance of 365 shares of stock of the defendant corporation to four individual defendants. The lower court passed a decree granting the relief prayed and directing the four stockholders to repay to the corporation dividends received by them on the stock declared to be illegally issued, which was ordered cancelled. From this decree, all the defendants appealed. The company was organized in January, 1942. Its authorized stock was 5,000 shares of no par value. At the organization meeting a resolution was passed authorizing the sale of this stock at $20 a share, and providing that stock to the value of $30,000 be offered for sale. This limited the stock to be issued to 1,500 shares. Prior to August 26, 1942, 1,035 shares had been subscribed for. On that date the stock complained of was issued by the president to the four defendants, none of the other stockholders being given an opportunity to buy. The plaintiffs below gave two reasons for their contention that the stock sales of August 26, 1942, were void: First, because they deprived them and the other original stockholders of their pre-emptive rights to purchase a proportionate amount of the remaining shares, and second, because in selling to themselves and their nominees, two of the individual defendants, who were the president and the general manager of the corporation, had abused their trust as officers and directors. Plaintiffs claimed their voting powers had been proportionately lessened and that the control of the company passed to the president and the general manager, and further, that the amount paid in dividends was required to be divided among 365 more shares of stock, to the consequent financial loss of the holders of the original shares. The Court of Appeals of Maryland affirmed the decree of the lower court granting the relief prayed, concluding that the sale must be set aside as a constructive fraud upon the other stockholders. Because of this conclusion, the court felt it was not necessary to deal with the assertion of the pre-emptive right. *Ross Transport Inc. et al. v. Crothers et al.*, 45 A. 2d 267. Enos S. Stockbridge of Baltimore (James W. Hughes and William J. Bratton of Elkton, on the brief), for appellants. Edward D. E. Rollins and Floyd J. Kintner of Elkton, for appellees.

New York.

Election of directors, by vote of proxies, secured through withholding from electors knowledge of true state of affairs, set aside. Petitioner bondholders and stockholders sought an order, under Sec. 25, General Corporation Law, vacating and declaring void an election of directors of the Third Avenue Transit Corporation, and

directing a new election to take place and for other relief. Petitioners alleged that the election should be set aside because the proxies voted thereat were secured by withholding vital information from the electors—information which might have affected their vote had it been furnished them. The New York Supreme Court, New York County, Special Term, Part I, observed: "The general picture that emerges from the numerous papers filed, both in support and in opposition to the pending application, is one of confusion and backstage machinations for the purpose of securing control of an important public utility. Enough is alleged and either explicitly conceded or not denied to show that when the election on May 9, 1945, was held, the electors who had given their proxies to the various committees soliciting them, had been kept in ignorance of the true state of affairs, and were, indeed, unaware of the fact that their proxies were being used, at least in the case of the so-called 'Investors Group,' for the purpose of handing over the control of the corporation to others than those named as the nominees for the directorships involved. Such conduct on the part of those who are in the highest fiduciary relationship with stockholders and bondholders of a corporation is reprehensible in the extreme and should not be tolerated in a court of equity. Section 25 of the General Corporation Law is specifically designed for the purpose of enabling a court of equity to correct a situation of this kind when brought to its attention." "The security holders entitled to vote were misled by being deprived of information which might easily have affected their judgment." In the course of its opinion, the court noted that there was no language in Section 1286 of the Civil Practice Act or in Section 25 of the General Corporation Law which would indicate an intention on the part of the Legislature to place any limitations of time on applications under Section 25. The application to set aside the election was granted and a new election was directed to be held. *Wyatt et al. v. Armstrong et al.*, 59 N. Y. S. 2d 502. Commerce Clearing House Court Decisions Requisition No. 347804.

Foreign Corporations

California.

Federal court held not to have jurisdiction in suit against foreign corporations on cause of action arising outside California, where suit was removed from state court. The United States Circuit Court of Appeals, Ninth Circuit, summarized the facts as follows: "Dunn brought suit in the California State Superior Court against two corporations, resident in another state, upon a cause of action wholly arising in the other state. The corporations were doing business in California and had designated an agent upon whom service of summons could be served. Upon motion of the corporations the cause was removed to the United States District Court upon the ground of diversity of citizenship. Thereupon the corporations-defendants

appeared specially and presented a motion to set aside, vacate and quash the service, and the motion was granted. Dunn appeals." The Court of Appeals observed that the jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction and that, if the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction. The inquiry was regarded as this: "Did the State Superior Court have jurisdiction of the cause? Unless states authorize their courts to entertain actions arising wholly outside the state, they have no jurisdiction to entertain them. Has California given its courts such jurisdiction?" After an examination of the California statute authorizing service upon a foreign corporation, Sec. 405 of the Civil Code, it was concluded that "it does not appear that authorization for California State Courts to entertain the instant action can be read into the statute." An order of the District Court granting a motion to quash service upon defendants was affirmed. *Dunn v. Cedar Rapids Engineering Co. of Delaware et al.*, 152 F. 2d 733. Desser, Rau & Christensen of Los Angeles, for appellant. Mathes & Sheppard, William C. Mathes and Gordon F. Hampton (Cameron W. Cecil, of counsel), of Los Angeles, for appellees.

Delaware.

Interest of foreign corporation in stock of Delaware company held not the subject of attachment in suit by stockholder of Delaware company, as an individual, seeking damages by reason of alleged breach of contract between the two companies. Plaintiff, a stockholder of a Delaware corporation, alleging that defendant, a foreign corporation not doing business in Delaware, was indebted to him for $7,720,000, began his action by foreign attachment. The property sought to be attached was 19,300 shares owned by defendant in the Delaware company. The indebtedness was asserted to arise out of plaintiff's ownership of stock in the Delaware company, which company was said to have sustained damages at the hands of defendant corporation by reason of breach of contract between defendant and the Delaware company. Plaintiff, alleging his company had been damaged in excess of $255,000,000, sought, as an individual and a stockholder, to recover the proportion of that amount which was represented by the proportionate part of the company's stock held by him. The Supreme Court of Delaware, New Castle County, ordered the attachment dissolved and the writ of foreign attachment against defendant quashed. After some consideration of the history of the subject of attachments in Delaware, the court noted that under Sec. 4631, the writ of attachment was to issue only upon plaintiff's affidavit that defendant was justly indebted to him and that the indebtedness was a sum of money exceeding $50, specifying the amount. The court observed: "We are only to determine whether the alleged claim is such as may be the subject of foreign attachment proceedings under our statute. We are of the opinion that it is

not." The damages alleged were regarded as unliquidated and "incalculable by any formula set out in the contract, or ordinarily available as a basis of an affidavit specifying the amount of indebtedness." "We think the damages," concluded the court, "assuming the plaintiff is entitled to recover them individually in a court of law are not such damages as create an indebtedness the amount of which can be specified within the meaning of Sec. 4631, authorizing proceedings by foreign attachment." *Blaustein v. Standard Oil Co.*, 45 A. 2d 527. Caleb S. Layton, C. A. Southerland and Aaron Finger of Wilmington, for plaintiff. Hugh M. Morris and Edwin D. Steel, Jr., of Wilmington, for defendant.

North Carolina.

Attempted service upon Secretary of State as process agent of withdrawn foreign corporation, in suit involving cause of action arising in another state, ruled ineffectual. Plaintiff North Carolina corporation sued defendant Virginia company on a cause of action arising in New Jersey. Prior to the service of process, defendant had formally withdrawn from North Carolina, closed its freight terminal there and removed all of its physical property and personnel from the state, including the process agent designated upon qualification. All this had occurred some time prior to service of process in the present suit. Service had first been made upon J. M. Goldston, who had leased defendant's intrastate franchise subsequent to its removal and who had later abandoned it in 1942. The Supreme Court of North Carolina ruled that this service was invalid and ineffectual as Goldston was not a "local agent" of the company under the statute upon whom service might be made. The plaintiff had procured an order for the issue of an alias summons and caused process to be served on the Secretary of State of North Carolina under G. S. Sec. 55-38, which requires foreign corporations owning property or doing business in the state to "have an officer or agent in this state upon whom process in all actions or proceedings against it can be served," but does not mention the Secretary of State. The court ruled that the service upon the Secretary of State was also invalid and ineffectual to bring the corporation within the jurisdiction of the court in connection with this cause of action arising in another state. *Central Motor Lines, Inc. v. Brooks Transportation Co., Inc.*,* 36 S. E. 2d 271.

* The full text of this opinion is printed in the **State Tax Reporter**, North Carolina, page 302. **(Formerly known as The Corporation Tax Service.)**

Taxation

Arizona.

Sales of property by merchant to a contractor for use of and used by contractor in construction for others ruled not taxable under gross sales tax law. Sales by Arizona merchants of material located out

of the state and delivered from that point directly to purchasers within the state ruled subject to tax and not a burden on interstate commerce. Appellant-plaintiff company instituted this suit to enjoin the tax commission from assessing or attempting to levy or assess a tax against it under the gross income (sales) tax law, based upon gross sales by it of materials to contractors, or based upon gross sales or transactions by it in interstate commerce. One of the questions raised was whether a merchant is required to pay a two per cent sales tax on merchandise sold to contractors who used the material purchased in construction for others. The Arizona Supreme Court noted that to be taxable the transaction must constitute a retail sale, and observed: "The question at issue is, were the sales made by plaintiff to the contractors sales at retail?" It noted that the question as to such sales made to a contractor was one upon which the courts were fairly well divided. After a review of the decisions of other states, the court concluded "that where a merchant sells tangible personal property to a contractor for use of and used by the contractor in construction for others such sales is a sale for resale and is not taxable." A second question concerned whether sales made by merchants in Arizona of merchandise or materials manufactured and located without the state and delivered from without the state, which could not be obtained within the state, were subject to the tax. The court ruled that such sales were taxable, finding no merit in appellant's contention that taxes on these sales involve or constitute a burden on interstate commerce. The court remarked that the sales were made in Arizona and were, therefore, taxable. *Crane Co. v. Arizona State Tax Commission,** 163 P. 2d 656. Snell, Strouss & Wilmer of Phoenix, for appellant. John L. Sullivan, Attorney General, and Earl Anderson, Assistant Attorney General, of Phoenix, for appellees.

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* The full text of this opinion is printed in the **State Tax Reporter**, Arizona, page 506. **(Formerly known as The Corporation Tax Service.)**

Nebraska.

Company doing business in state held not exempt from taxation on its intangibles by reason of fact it was a foreign corporation. Plaintiff, a New Jersey corporation, had its principal place of business in Chicago, Illinois. It had branch offices at Omaha, Lincoln and Grand Island, Nebraska, for the sale of machinery and parts at wholesale and of motor trucks and parts at both wholesale and retail. In 1942 plaintiff filed a personal property return listing its different types of taxable intangibles. The county assessor raised the value of one class to almost double the amount plaintiff returned. Plaintiff filed a complaint with the county board of equalization and the assessment was reduced to the amount originally returned. No appeal was taken from that action. Plaintiff subsequently paid the tax with interest, without protest or notice of protest. Shortly afterward, plaintiff filed a demand upon the county treasurer and other

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In the Corporation Trust system each step in Statutory Representation is a coordinated, integrated part of a complete system. The offices and representatives it furnishes are linked with, and their experience reflected in, the Bulletins which notify a corporation, through its lawyer, of state taxes to be paid and reports to be filed. The Report and Tax Notification Bulletins are linked by spot references to the State Tax Reporter, in which the lawyer finds the complete text of the applicable laws, regulations and court decisions. A prearranged plan worked out between C T representative and each company's own lawyer controls the handling of process served on the company.

defendants, calling for the repayment of the sums allocated to them, claiming the tax was void for the reason that plaintiff was a foreign corporation, did not reside in Nebraska and was not liable to taxation on class B intangible property whatsoever. The payment demanded was refused and suit was instituted for its recovery. The Nebraska Supreme Court, after an exhaustive review of the constitutional and legislative history of the taxation of intangibles in Nebraska, concluded that the intangibles of plaintiff were taxable and that the legislature intended that all intangibles in the state not exempt should be returned, assessed and taxed in Nebraska, without regard to whether the owner was a resident or non-resident. *International Harvester Company v. The County of Douglas,** 20 N. W. 2d 620. Kelso Morgan, Co. Atty., and Joseph D. Houston, Chief Dep. Co. Atty., of Omaha, for appellant Douglas County. Wm. Ross King, of Omaha, for Appellant School Dist. of Omaha. Ellick, Fitzgerald & Smith, Seymour L. Smith, H. C. Linahan, G. H. Seig, E. F. Fogarty, and W. Ross King, of Omaha, for appellees. Kelso Morgan, Joseph D. Houston, and Wm. Ross King, of Omaha, for appellant City of Omaha. Commerce Clearing House Court Decisions Requisition No. 347915.

* The full text of this opinion is printed in the **State Tax Reporter,** Nebraska, page 2517.

Pennsylvania.

Where foreign corporation's main office and plant was in state, county court rules against inclusion, in its allocation fractions, of its subsidiaries' tangible property, wages and gross receipts, where subsidiaries did business outside Pennsylvania. Defendant New Jersey corporation, authorized to do business in Pennsylvania, had its main office and chief manufacturing plant in Philadelphia and maintained sales offices, warehouses, assemblage plants and storage depots at various points throughout the United States. It owned the entire capital stock of two subsidiaries, one of which owned the entire capital stock of three other companies. All of these companies, including defendant were engaged in the same character of business and defendant was engaged in a unitary enterprise. The subsidiaries did business outside Pennsylvania. The first of the two questions involved was: "Whether in fixing the parent's capital stock value for franchise tax purposes, where the parent company and each of its subsidiaries are corporate entities and doing a unitary business, the Commonwealth should add the tangible property, wages and salaries, and gross receipts of each of the subsidiaries to the tangible property, wages and salaries, and gross receipts of the parent company in ascertaining the three allocation fractions." In answering this question in the negative, the Court of Common Pleas, Dauphin County, after an examination of the statute and pertinent Pennsylvania decisions, observed: "The statute is plain. The allocation fractions are to be made of the tangible property, wages and salaries,

and gross receipts of the taxpayer. That does not authorize a hunt for something outside that may have some effect upon the value of the capital stock of the taxpayer." "So such items of subsidiaries cannot be specifically added to the tangible property, wages and salaries, and gross receipts of the taxpayer in order to ascertain the allocation fractions." The court also concluded that, as the chief place of business of the defendant was in Pennsylvania, sales of securities voluntarily made in the course of business and necessary to the operation of the business were properly included in the numerator of the gross receipts fraction as sales attributable to the corporate activity of the taxpayer within the state, and also properly included in the denominator, which is "the amount of the taxpayer's gross receipts from all its business." *Commonwealth of Pennsylvania v. Electric Storage Battery Company,** 57 Dauphin County Reports 201. James H. Duff, Attorney General, for appellant. Hull, Leiby & Metzger of Harrisburg, for appellee. Commerce Clearing House Court Decisions Requisition No. 350634.

* The full text of this opinion is printed in the **State Tax Reporter,** Pennsylvania, page 850.

Tennessee.

Coal corporation, soliciting orders in Tennessee, filled, after approval in another state, by shipment of coal from mines in Tennessee to purchaser in that state, held to subject company to state and county privilege taxes, although billing was done in another state. Complainant foreign company, with its principal office and place of business in Cincinnati, Ohio, a coal broker, had a resident representative in Knoxville, Tennessee, where it had an office with its name on the door and its name was also listed in the telephone directory. Its representative took orders from wholesale dealers in coal. These were transmitted to Cincinnati, where, if accepted, they were sent to mines in Tennessee for shipment of the coal by railroad to the purchaser. Billing was done from Cincinnati. None of the coal sold in Knoxville by the complainant crossed the state line before delivery to the purchaser. Complainant contended it was not subject to privilege taxes for the state and county imposed upon coal or coke agents or dealers, alleging that the operation was in interstate commerce. The Supreme Court of Tennessee upheld the tax as applied to the complainant, finding no merit in the contention that the operation was in interstate commerce, remarking: "Counsel insists that 'the billing' or the way the papers, payment and orders for transportation were handled are determinative. No authority is cited to support the proposition that where no part of the commodity which is the object of the purchase and sale, the essence of the contract, has crossed a state line, that the transaction is one in interstate commerce. There is a wealth of authority to the contrary." *Kearns Coal Co. v. City of Knoxville,* 191 S. W. 2d 183. J. H. Hodges of Knoxville, for Kearns Coal Co. Ben Winick of Knoxville, for City

of Knoxville. William F. Barry, Sol. Gen. of Nashville and Allison B. Humphreys, Jr., Asst. Atty. Gen., for State of Tennessee. James G. Johnson of Knoxville, for J. W. Dance, Clerk.*

* The full text of this opinion is printed in the **State Tax Reporter**, Tennessee, page 3902.

Utah.

The Supreme Court of the United States denies recovery in federal court suits against state for alleged wrongful tax exactions, where state had not clearly consented to be sued in the federal courts. These were two suits brought in the United States District Court for the District of Utah to recover alleged illegal mining occupation taxes paid to the Utah State Tax Commission, which, with its individual members, constituted the defendants in each suit. The plaintiff companies prevailed in the District Court. The judgments were reversed by the Circuit Court of Appeals, Tenth Circuit, which regarded the suits as actions against the State of Utah and concluded that, while the state had waived immunity from suit in the state court and had consented to be sued there in actions for the recovery of taxes claimed to be illegally exacted, there was no clear declaration in the statute of the intention of Utah to submit to suit in the federal courts as would, in the absence of a decision to that effect by the Supreme Court of Utah, justify the court in giving the statute such a broad interpretation. (150 F. 2d 905; The Corporation Journal, December, 1945, page 54.) The Supreme Court of the United States has affirmed this decision, also concluding that the suits were suits against Utah and that Utah had not consented to be sued for the alleged wrongful tax exactions in the federal courts, Utah having established an adequate procedure for the recovery of taxes illegally collected. *Kennecott Copper Corporation v. State Tax Commission et al.; Silver King Coalition Mines Company v. State Tax Commission et al.,** Supreme Court of United States, March 25, 1946; Docket Nos. 424-425. Commerce Clearing House Court Decisions Requisition No. 354119. H. Thomas Austern of Washington, D. C., C. C. Parsons, Wm. M. McCrea, A. D. Moffat and R. J. Hogan of Salt Lake City, for petitioner.

* The full text of this opinion is printed in the **State Tax Reporter**, Utah, page 7623.

Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 864. *Richfield Oil Corporation v. State Board of Equalization,* 163 P. 2d 1. (The Corporation Journal, February, 1946, page 88.) Application of retail sales tax to sales of oil to foreign governments, delivered f. o. b. California port to buyer's tanker. **Appeal filed, February 18, 1946. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 25, 1946.**

INDIANA. Docket No. 4. *Hewit v. Freeman,* 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to non-residents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945.**

NEW YORK. Docket Nos. 518-519. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.,* 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946.**

OHIO. Docket No. 1019. *International Harvester Company v. Evatt, Tax Commissioner of Ohio,* 64 N. E. 2d 53. (The Corporation Journal, February, 1946, page 92.) State taxation of foreign corporations—Ohio franchise tax measured by volume of business done in Ohio. **Appeal filed, March 29, 1946.**

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver),* 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.**

UTAH. Docket Nos. 424-425. *State Tax Commission et al. v. Kennecott Copper Corporation; State Tax Commission et al. v. Silver King Coalition Mines Company,* 150 F. 2d 905. (The Corporation Journal, December, 1945, page 54.) Utah Mining Occupation tax—jurisdiction of federal court over suit to recover state occupation tax paid under protest. **Petition for certiorari filed, September 12, 1945. Certiorari granted, November 5, 1945. Argued, January 30 and 31, 1946. Judgments affirmed, March 25, 1946.** (See page 154.)

* Data compiled from **CCH U. S. Supreme Court Service 1945-1946.**

Regulations and Rulings

ALABAMA—An individual employed by a property owner, on a monthly basis, to supervise all the construction work is not liable for the contractor's license required under Sec. 496, Tit. 51, 1940 Code. Such an individual is merely acting in the capacity of a "foreman." (Attorney General's Opinion, State Tax Reporter,* Alabama, ¶ 30-448.)

ARIZONA—The State Tax Commission has issued a regulation relating to the taxation, under the gross income tax law, of those engaged in retreading, recapping, repairing and selling tires and in repairing and selling inner tubes. (State Tax Reporter,* Arizona, ¶ 6911a.)

IDAHO—The laws of Idaho, Sec. 61-2412, placing a tax on interest from Federal bonds, is invalid. Such a state tax is not permitted by the Federal Constitution, Art. 1, Sec. 8, Clause 2. (Opinion of the Attorney General, State Tax Reporter,* Idaho, ¶ 1501.)

KENTUCKY—The Department of Revenue has issued Regulation No. SC-3, which requires those who hold property which may be subject to be vested in the Commonwealth by escheat to report annually to the Department on or before September 1 as of July 1 preceding, "regardless of the fact that no property is presumed abandoned." (State Tax Reporter,* Kentucky, ¶ 34-469.)

LOUISIANA—Timber on federal areas is not subject to severance tax if, at the time of severance, the timber is owned by the federal government or the timber is privately owned but the federal government has exclusive jurisdiction in the area. Severance tax is collectible on severance of timber from a federal area if, at the time of severance, the timber is privately owned and the federal government has not accepted exclusive jurisdiction of the area. (Louisiana Revenue Bulletin, State Tax Reporter,* Louisiana, ¶ 45-502.)

MINNESOTA—The Secretary of State is required to issue a private detective's license to an applicant when application is in due form and the fee is paid, unless applicant is disqualified or application is false. Unless the application is alleged to be false or applicant is disqualified, the law does not provide for a hearing. (Opinion of the Attorney General, State Tax Reporter,* Minnesota, ¶ 30-755.01.)

NEW YORK CITY—Hotels, clubs and other establishments which serve meals to guests, making a separate charge on the guest check for "room service" in addition to the charge for food or drink, are required to include such charge in the base upon which the city sales tax is calculated. (Ruling of Special Deputy Comptroller, State Tax Reporter,* New York, ¶ 220-270.)

Where a manufacturer or distributor sells advertising material to his customers at cost, the receipts from such transactions are to be included in the measure of the city gross receipts tax, irrespective of the fact that no profit may be realized therefrom. (Special Deputy Comptroller, State Tax Reporter,* New York, ¶¶ 124-505, 220-271.)

* *Formerly known as The Corporation Tax Service.*

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Annual Verification Report as to Process Agent due on or before July 1.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MICHIGAN—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

NEVADA—Annual List of Officers and Designations and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3-CT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.

OREGON—Annual Report due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before June 1.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.

TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

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THE CORPORATION TRUST COMPANY
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THE CORPORATION JOURNAL

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